* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: May 13, 2009
Date of Order: May 27, 2009

+CCP No.124/2007 in OMP No. 291/2006
% 27.05.2009

NATIONAL AGRICULTURAL CO-OPERATIVE Marketing Federation of India Ltd. (NAFED) ...Petitioner
Through : Mr. T.K. Ganju, Sr. Adv. with Mr. A.K. Thakur, Mr. R.K. Mishra & Mr. Rajeev Arora, Advs.

Versus

RAJESH KHANNA & Ors. ...RespondentS/Contemnors
Through: Mr. D.K. Rustagi with Md. Niyazuddin, Adv. for R.1
Mr. Saket Sikri, adv. for R.4-6 & 8

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether judgment should be reported in Digest?

JUDGMENT

1. This Court on 6th July, 2006 in OMP No. 291/06 wherein the contemnor Rajesh Khanna was respondent no. 1 passed an order attaching the immovable properties mentioned in para 10 and 11 of the petition. The properties so attached included plot no. 1, Special Economic Zone (SEZ), Noida, UP, a plot measuring 2118 square meters allotted to Rajesh Khanna. The total numbers of properties attached were 13 belonging to different respondents. The petitioner had sought attachment of the properties since the petitioner had to recover an outstanding admitted balance of Rs. 47,80,90,896/- as on 30th May, 2006. Vide order dated 16th May, 2007, this Court lifted the attachment in respect of property no. E-19, East of Kailash in view of the fact that the parties

wanted to settle the dispute and this property was to be sold to enable the respondent to pay part of the dues to the petitioner. This Court on 14th December, 2007 at request of the parties further lifted attachment in respect of properties namely E-18, East of Kailash, E-16, Block B-1, Mohan Cooperative Industrial Area so that the properties could be sold by the public auction and the claims of the petitioner be settled. This Court also appointed a court observer for carrying out public auction of the properties. The petitioner thereafter learnt that the respondent Rajesh Khanna had clandestinely sold property of Noida attached by the Court vide order dated 6th July, 2006 and filed this application for Contempt of the Court.

2. The petitioner submitted that the admitted liability of the respondent as on 30th April, 2007 was Rs.61.67 crore and the respondent was supposed to discharge this liability within a definite time schedule as per the settlement arrived at between the parties and recorded in the Court's order. Out of the due amount, Rs. 5 crore was to be paid within 30 days from the date of the permission granted by the Court for sale of the property no. E-19, East of Kailash, a further amount of Rs. 20 crore was undertaken to be paid within next 60 days and an amount of Rs.18 crore within 90 days.

3. The settlement as arrived at between the parties is on record. A perusal of this settlement would show that the settlement arrived at between the petitioner and the respondents no. 1 to 8 was recorded on a non-judicial stamp paper of Rs. 100/-. It was signed by all the parties and was submitted in the Court along with affidavits and undertakings of all the respondents undertaking to comply with this settlement. The

affidavits of respondents showed that all the respondents had also given personal guarantee for repayment of the loan in terms of the settlement. In fact, the respondents were also facing criminal case lodged against them by the petitioner because of a fraud played by the respondents upon the petitioner and criminal proceedings were simultaneously going on. The parties made IA No.5743/2007 in OMP No. 291/06 wherein a submission was made by the respondents that they shall be bound by the undertakings given to the Court for implementation of the settlement and to comply with the terms of the settlement. Be it noted that the orders of this Court of attachment of respondent of the properties continued and was not lifted. After recording of settlement attachment was only lifted in respect of the three properties which the respondents expressed their desire to sell to discharge their liability.

4. The conduct of the respondent shows that the respondent no. 1 and others respondents had different design and they wanted to take Court for a ride. The court observer Justice Sharda Aggarwal (retd.) appointed by this Court in WP(Crl.) 785/07 and WP(Crl.) 461/07 on 4.4.2008 gave her report to the Court dated 5th July, 2008 and she recorded that the respondent no. 1 and other respondents resisted the auction of the properties and had a non-cooperative attitude. It is specifically recorded that the respondents herein did not produce title deeds of the properties despite the statement given by them before the Court that they would produce the title deeds, instead they informed that a loan had been raised against the property No. E-11, East of Kailash and property no. 469-470, Katra Ishwar Bhawan from State Bank of Patiala and Indian Overseas Bank. The properties were thus not free from

encumbrances. This information was not given to the Court when the respondents were asked to file affidavits in the Court. Regarding property in Mohan Cooperative Industrial Area, the contemnors took a plea that they were the second purchaser and original lease deed had been lost by them. The contemnors resisted auction of the properties by moving applications in the WP(Crl.) No.6027/08 and WP(Crl.) 785/07 seeking recalling/modification of the order dated 4.4.2008 regarding Mohan Cooperative Industrial Area property. The contemnors did not write to State Bank of Patiala and Indian Overseas Bank that the property encumbered was being put to auction. Rather the contemnor informed the auctioneer that they had raised a loan against Mohan Cooperative Industrial Area property from a private financer and an FIR was registered with EOW with regard to that property.

5. Despite all hurdles being put by the contemnor, the court auctioneer proceeded with the auction in terms of the order of the Court and M/s Niadarmal Jai Kishan was selected and approved as auctioneer. The court observer records that the contemnors no. 1, 7 and 9 moved application on 9th June, 2008 for recalling the directions dated 2nd June, 2008 and put notice dated 6th June, 2008. They moved another application dated 3rd June, 2008 and prayed for deletion of property no. E-16, B-1 Mohan Cooperative Industrial area from the auction schedule. The learned court observer had given details of different other hurdles created by the contemnors and had ultimately recorded that the auction of the properties could not take place.

6. It is to be noted that on 4th April, 2008 when this Court passed order of auction in WP(Crl.) 461/07, the Court had recorded statement of

all the contemnors and recorded their undertakings. The statement of each contemnor shows that he had no objection if the property mentioned in the affidavit was sold away by way of a public auction. An undertaking was given that they would allow inspection of the properties to the interested bidder. Despite this undertaking given by the different respondents including contemnor Rajesh Khanna they defied the orders of the Court and the undertaking given before the Court and tactically saw to it that these properties were not auctioned.

7. Mr. Rajesh Khanna in defiance of attachment order sold away property of Noida attached by the Court, clandestinely without permission of the Court by a sale deed datd 23rd May, 2007. After service of contempt notice, in reply to contempt notice, Mr. Rajesh Khanna pleaded before the Court that what he sold to M/s. J.S. Export vide conveyance deed dated 23rd May, 2007 was '*malba*' (rubbles of a demolished structure). It was strenuously argued in the Court by learned counsel for the petitioner that the *malba* of the building at the plot in SEZ zone was sold by the contemnor vide sale deed dated 23rd May, 2007. The very fact that the contemnor first defied the order of the Court and sold the property attached by this Court clandestinely and then justified the sale by calling an 'A' class building as *malba* shows contemptuous attitude and the contempt with which contemnor treated the orders of the Court.

8. It is contended by counsel for the contemnor that the property in SEZ zone is given to a person for a limited lease period. He has placed on record the sub-lease executed between Okhla Industrial Development Authority and the contemnor, Rajesh Khanna showing that the plot no.1 in the Noida Special Economic Zone, measuring 2118 square

meters was given on lease for 15 years computed from first day of month in which possession is taken on quarterly rent of Rs. 32,300/-. He submitted that the land underneath the building could not be sold and only building constructed over the plot by the petitioner could be sold, therefore he has described the building as a *malba*/super structure.

9. This Court while passing order of attachment of the property had attached only the interest of the contemnor. It is obvious that this Court had not attachéd the interest of Noida Authority or superior lessor, i.e. President of India. If the contemnor had interest only on super structure and building, it is the building which was attached by this Court. The contemnor had no authority to sell this building so long as it was lying attached by this Court. Moreover, the perusal of conveyance deed executed by contemnor in favour of M/s. J.S. Export shows that the petitioner had sought permission from Noida Authority for sale of this building. It is also apparent from the sale deed that the deal in respect of the sale of this property was done after the attachment order was passed and the contemnor was very well aware of the attachment order.

10. The conduct of the respondent Rajesh Khanna clearly goes to show that the respondent, Rajesh Khanna had deliberately and with a design to play fraud upon the Court and upon the petitioner, sold out this property clandestinely without permission of the Court. He had also been making deliberate false representation in the Court and conducting himself defiantly. After accepting the liability to the tune of more than Rs.60 crore and despite giving undertaking of discharging liability by sale of part of the property to be sold by public auction Rajesh Khanna and other respondents did not allow the auction to proceed further. It seems

that they had entered into the compromise and filed the same in the Court with their undertakings only to escape the criminal liability and to get the FIR quashed. Once the Court had given them protection they saw to it that the compromise was frustrated. The role of Rajesh Khanna in this was most prominent in defiance of the order of the Court in selling the property attached by the Court. There had been a continuous contemptuous conduct of the respondent in defiance of the orders of this Court, at every stage. Rajesh Khanna substantially interfered with due course of justice. In the additional affidavit Mr. Rajesh Khanna has tendered apology but this apology is not bona fide and is motivated to escape punishment under contempt. The nature of defiance and conduct of contemnor of frustrating the compromise and efforts of court to put properties to auction calls for imposition of sentence of civil imprisonment on him.

11. I consider that it is a fit case where contemnor Rajesh Khanna should be sentenced to 6 months simple imprisonment and a fine of Rs.2,000/-. Regarding other contemnors, the Court reserves its order for punishment in view of their case being on different footing. The contemnor, Rajesh Khanna be taken into custody and sent to jail.

May 27, 2009 **SHIV NARAYAN DHINGRA, J.**
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